

Preliminary Draft-Response Action Regulations
Changes in this version reflect changes from the existing
California Code of Regulations (Cal. Code Regs.)

Key to changes:

Underline: New text to Title 22, Cal. Code Regs.

Strikeout: Text deleted from Title 22, Cal. Code Regs.

Title 22, Division 4.5, as published in *Barclays Official California Code of Regulations*, currently includes Corrective Action language incorporated as Chapter 50, subdivisions 68400 et seq. It should be noted that this language was repealed in 1999 and technically no longer exists. Therefore, for the purposes of this proposed rulemaking, strikeout conventions will not be used with regards to such repealed language.

The Table of Contents for Title 22, Division 4.5, is amended as follows:

**Division 4.5, Environmental Health Standards
for the Management of Hazardous Waste**

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Add Chapter 50, sections 68400.1 - 68400.5:

68400.1 Applicability

(a) The provisions of this chapter apply to a release or threatened release of a hazardous waste, hazardous constituent, hazardous substance or hazardous material that is governed by Health and Safety Code, division 20, chapters 6.5, 6.65 or 6.8. For the purposes of this chapter, the term "response action" includes corrective action.

(b) A responsible party shall implement a response action beyond property boundaries as necessary to address the vertical and lateral extent of contamination caused by a release or to protect public health or the environment. The term "contamination," as used in this chapter, means a release or threatened release of a hazardous waste, hazardous constituent, hazardous substance or hazardous material.

(c) The requirements of this chapter shall not affect or alter any substantive or procedural rights or obligations or requirements, with regard to the corrective action process of Health and Safety Code, division 20, chapter 6.5, established pursuant to any enforcement orders issued by the Department, or any agreements entered into between the Department and a responsible party, prior to the effective date of this chapter.

(d) The provisions of this chapter are prospective and shall not apply to sites for which the Department has issued an order or entered into an agreement addressing all necessary response action for the site for the release in question prior to the effective date of the chapter, regardless of whether implementation of the remedy has commenced.

(e) The responsible party shall ensure that all engineering and geological interpretations, conclusions and recommendations are developed in accordance with applicable state law, including, but not limited to, Business and Professions Code sections 6735 and 7835. The responsible party shall ensure that all risk assessment and toxicological interpretations, conclusions and recommendations are conducted by a professional with certification as a Diplomate of the American Board of Toxicology. Possession of a Master's Degree in Toxicology, Biochemistry, Pharmacology or a closely related specialty from an accredited college or university and three years of experience following the receipt of the Master's Degree in designing and managing toxicological studies, interpreting results, and conducting hazard and safety evaluations; or possession of a Doctoral Degree in Toxicology, Biochemistry or Pharmacology, or a closely related specialty, and one year of experience following the receipt of the Doctoral Degree in designing and managing toxicological studies, interpreting results, and conducting hazard and safety evaluations, may be substituted for the certification.

(f) The provisions of this chapter establish criteria and procedures for determining whether or not a unified program agency is qualified to implement the environmental assessment and corrective action program pursuant to Health and Safety Code sections 25187, 25200.10 and 25200.14.

Except as otherwise specified in this chapter, the provisions of this chapter are not intended to, and shall not be construed to, preclude any other state or local agency from exercising its enforcement authority.

NOTE: Authority cited: Sections 25150, and 58012, Health and Safety Code.
Reference: Section 25187, 25356.1, and 25404.1, Health and Safety Code.

68400.2. Definitions Applicable to this Chapter

Unless otherwise defined herein, the definitions of terms used in this chapter shall be those in Division 20 of the Health and Safety Code and section 66260.10 of this division. For the purposes of this chapter, the following definitions apply:

- "administrative record file" means a record maintained by the response action agency that consists of all documents the response action agency relied upon or considered when selecting, taking or requiring response action pursuant to this chapter.

- "corrective action" means activities taken to investigate, characterize, evaluate, correct, remove, or remediate a release or threatened release of a hazardous waste or constituent, as necessary to protect public health and/or the environment.

- "Department" means the Department of Toxic Substances Control.

- "Federal act" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

- "hazardous constituent" has the meaning set forth in section 66260.10 of this division.

- "hazardous material" has the meaning set forth in Health and Safety Code section 25260.

- "hazardous substance" has the meaning set forth in Health and Safety Code sections 25316 and 25317.

- "hazardous waste" has the meaning set forth in Health and Safety Code section 25117.

- "operation and maintenance" means those activities initiated or continued at a site following completion of a response action that are deemed necessary by the response action agency in order to protect public health or safety or the environment, to maintain the effectiveness of the response action at the site, or to achieve or maintain the standards and objectives established by the final remedial action plan or final removal action work plan applicable to the site.

- "phase I environmental assessment" has the meaning set forth in Health and Safety Code section 25200.14.

- "preliminary Endangerment Assessment" (PEA) has the meaning set forth in Health and Safety Code section 25319.5.

- "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, including the abandonment or discarding of barrels, containers, and other closed receptacles containing hazardous waste, hazardous constituents, hazardous substances or hazardous materials.

- "remedial action plan" is a document that meets the requirements of Health and Safety Code sections 25356.1 and 25356.1.5.

- "remedy" or "remedial action" includes all of the following:

(1) Those actions that are consistent with a permanent remedy, that are taken instead of, or in addition to, removal actions in the event of a release or threatened release of a hazardous waste, hazardous constituent, hazardous substance or hazardous material into the environment, except that any reference in Section 101(24) of the federal act (42 U.S.C. Sec. 9601(24)) to the President, relating to determinations regarding the relocation of residents, businesses, and community facilities shall, for the purposes of this chapter, be deemed to be a reference to the Governor and any other reference in that section to the President shall, for the purposes of this chapter, be deemed a reference to the Governor, or the director of the Department, if designated by the Governor.

(2) Those actions that are necessary to monitor, assess, and evaluate a release or threatened release of a hazardous waste, hazardous constituent, hazardous substance or hazardous material.

(3) Site operation and maintenance.

- "remove" or "removal" includes the cleanup or removal of released hazardous substances or hazardous materials from the environment or the taking of other actions as may be necessary to prevent, minimize, or mitigate damage which may otherwise result from a release or threatened release, as further defined by Section 101(23) of the federal act (42 U.S.C. Sec. 9601(23)). It also includes those actions that are necessary to monitor, assess, and evaluate a release or threatened release of a hazardous waste, hazardous constituent, hazardous substance or hazardous material.

- "removal action work plan" means a work plan prepared or approved by the response action agency that is developed to carry out a removal action with an estimated capital cost of less than \$1,000,000, in an effective manner, that is protective of the public health and safety and the environment. The removal action work plan shall include a detailed engineering plan for conducting the removal action, a description of the onsite contamination, the goals to be achieved by the removal action, and any alternative removal options that were considered and rejected and the basis for that rejection.

- "response action," "respond" or "response" means either or both of the following and all such terms including enforcement activities, operation and maintenance activities, and five-year review activities related thereto:

(1) remove, removal, remedy, and remedial action,

(2) corrective action

- "responsible party" has the same meaning set forth in Health and Safety Code section 25323.5 and includes present and prior owners, lessees, or operators of the property where hazardous waste, hazardous constituents, hazardous substances or hazardous materials are, have been or may be located; present or past generators, storers, transporters, disposers, and handlers of hazardous waste, hazardous constituents, hazardous substances or hazardous materials; persons who arrange, or have arranged, by contract or other agreement, to treat, transport, dispose of, or otherwise handle hazardous waste, hazardous constituents, hazardous substances or hazardous materials; or other persons performing corrective action.

- “response action agency” means the Department of Toxic Substances Control, an agency determined to be qualified pursuant to Health and Safety Code section 25187(a)(2) or section 25404.1, or an agency designated pursuant to Health and Safety Code section 25262. For purposes of Health and Safety Code, division 20, chapter 6.8, a response action agency may also be a California regional water quality control board.

- “risk assessment” means a risk-based system of analysis used to characterize the current and potential threats to human health and the environment that may be posed by contaminants migrating to groundwater or surface water, releasing to air, leaching through soil, remaining in the soil and bioaccumulating in the food chain.

- “site” means any site, area or facility, including, but not limited to, any building, structure, installation, equipment, pipe or pipeline, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock or aircraft, where hazardous waste, hazardous constituents, hazardous substances or hazardous material has been treated, stored, transferred, disposed of, deposited, placed, released, or has otherwise come to be located.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code.

Reference: Sections 25187, 25356.1 and 25404.1, Health and Safety Code.

68400.3. General Provisions.

(a) Except as provided in paragraph (f) of this section, any response action taken pursuant to this chapter shall be based upon, and no less stringent than, all of the following requirements. If a conflict occurs among the following requirements, the Department shall determine which requirement is most stringent or appropriate:

(1) The requirements of Subpart E of the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. 300.400 et seq.), as amended.

(2) The regulations established pursuant to Division 7 (commencing with Section 13000) of the Water Code, all applicable water quality control plans adopted pursuant to Section 13170 of the Water Code and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7 of the Water Code, and all applicable state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code, to the extent that the Department or regional board determines that those regulations, plans, and policies do not require a less stringent level of remediation than the federal regulations specified in paragraph (1) and to the degree that those regulations, plans, and policies do not authorize decisionmaking procedures that may result in less stringent response action requirements that those required by the federal regulations specified in paragraph (1).

(3) Applicable provisions of Health and Safety Code, division 20, chapter 6.8 and its implementing regulations.

(4) Applicable provisions of Health and Safety Code, division 20, chapter 6.5 and its implementing regulations.

(5) Applicable guidance documents of the U.S. Environmental Protection Agency (U.S. EPA) and the Department.

(b) The procedure for implementing a response action includes at a minimum, but is not limited to the following:

(1) A preliminary endangerment assessment or other assessment deemed equivalent by the Department;

(2) At any site where the preliminary endangerment assessment, or equivalent assessment, indicates that there is a potential release to air, soil, surface water and/or groundwater requiring further investigation, the responsible party shall prepare and submit the following document to the response action agency for review and approval:

(A) A Sampling and Analysis Plan. This plan shall contain at a minimum the following:

1. Sampling objectives and rationale for the sampling locations, depths and analysis proposed.

2. Description of the procedures for sample collection, handling, preservation, chain-of-custody, and transport.

3. Analytes and analytical methods.

4. Quality assurance and quality control (QA/QC) protocols necessary to achieve the sampling objectives and maintain precision and accuracy of the data.

(3) At sites with groundwater contamination, if deemed necessary by the response action agency, the responsible party shall prepare and submit Groundwater Monitoring Reports in accordance with the monitoring and reporting schedule specified by the response action agency. The Groundwater Monitoring Report shall, at a minimum, contain the following:

(A) Tables compiling sample results of all groundwater samples.

(B) A discussion of the sampling results. Any significant changes from previous sampling or trends should be noted. Graphical representations of data through time for the groundwater monitoring wells and the chemical constituents specified by the response action agency.

(C) Water level data and groundwater flow direction.

(D) A brief discussion of the sampling and analysis methodology and quality assurance/quality control measures taken. Any deviations from the methodology approved by the response action agency shall be noted, along with the rationale for this change.

(E) Field sampling forms, chain-of-custody forms and laboratory analysis reports for the sampling events addressed in the report.

(4) Financial assurance, except as otherwise required in Health and Safety Code section 25355.2 governing financial assurance for response actions conducted pursuant to Health and Safety Code, division 20, chapter 6.8.

(5) If applicable, a remedial action plan prepared in accordance with this chapter shall contain, at a minimum, the following:

(A) a summary of activities conducted and the results of the site investigation, risk assessment, and feasibility study for all media of concern;

(B) the recommended alternative;

(C) operation and maintenance requirements, if deemed necessary by the response action agency;

(6) Land use controls in accordance with Chapter 39, section 67391.1, of this division.

(7) Remedy design and implementation plans, for sites where a remedial action plan is approved by the response action agency.

(8) Completion Report documenting implementation of the response action;

(9) Public participation conducted in accordance with Health and Safety Code sections 25356.1, 25358.7 and 25358.7.1, and chapter 21 of this division, to the extent applicable. Early public participation in the response action process is encouraged.

(10) For sites where operation and maintenance activities are deemed necessary by the response action agency in order to protect public health or safety or the environment, to maintain the effectiveness of the remedy at the site, or to achieve or maintain the removal or remedial action standards and objectives, the response action agency shall require, at a minimum, the following:

(A) financial assurance;

(B) operation and maintenance agreements or orders, or other appropriate mechanism if no responsible party exists, which must be entered into, issued, or included in existing agreements or orders, to require implementation of operation and maintenance activities following completion of a response action;

(C) operation and maintenance plan describing the required operation and maintenance requirements.

1. For sites where the response action agency determines that on-going groundwater or surface water monitoring is required, a monitoring report shall be submitted, covering the required monitoring, operation and maintenance activities for the previous reporting period. The report shall also contain an evaluation of whether the remedy is operating in accordance with the standards and objectives outlined in the remedial action plan or remedial action workplan.

a. For sites undergoing corrective action, the response action agency shall require, at a minimum, an annual monitoring report to be submitted no later than March 1 of each calendar year, covering the required monitoring, operation and maintenance activities for the previous calendar year. If the release is determined to be significant, the response action agency may require a more stringent reporting timeframe than annual reporting.

b. The reporting timeframe may be reevaluated as part of the five-year review described in subsection 68400.3(b)(9)(C)2.

2. For sites where a hazardous waste, hazardous constituent, hazardous substance or hazardous material is left in place above unrestricted land use standards, the remedy shall be reviewed to determine if it is sufficient to protect public health or safety or the environment at least every five years following completion of construction of the remedy. Based upon the five-year review, the response action agency may require additional response action, if necessary.

(c) Except as provided in paragraphs (d) and (f) of this section, the response action agency shall prepare or approve remedial action plans for completion of response actions at all sites except where:

(1) Conditions present an imminent or substantial endangerment to public health and safety or the environment;

(2) The site is listed on the National Priority List by the U.S. Environmental Protection Agency pursuant to the federal act, if the conditions of Health and Safety Code section 25356.1(h)(2) are met; or

(3) The estimated capital cost of a removal action is less than \$1,000,000 and the requirements of Health and Safety Code section 25356.1(h)(1) are met.

(d) (1) The response action agency shall prepare or approve removal action workplans for all sites where a non-emergency removal action is proposed with an estimated capital cost of less than \$1,000,000 and where a remedial action plan is not required.

(2) Except as provided in paragraph (d)(3), removal action workplans shall consist of all of the following:

(A) a detailed engineering plan for conducting the removal action;

(B) a description of the onsite contamination;

(C) the goals to be achieved by the removal action;

(D) any alternative removal options that were considered and rejected and the basis for that rejection;

(E) an analysis of effectiveness, implementability and cost of each alternative considered.

(3) Where the response action agency determines that less than six months exists before onsite removal activities must begin and the removal action will be completed within one hundred eighty (180) days of initiation, the removal action workplan for the removal action taken or approved shall consist of a memorandum documenting all of the following:

(A) the rationale for the determination that less than six months exists before onsite removal activities must begin;

(B) a description of the onsite contamination;

(C) the goals and objectives to be achieved by the removal action;

(D) a description of the removal action, including an estimated capital cost for the removal action, a description of how the removal action will be implemented, and an implementation schedule;

(E) a statement that the proposed removal action is implementable and can cost-effectively meet the removal action objectives.

(4) The following public participation requirements are applicable to removal actions. Early implementation of public participation is encouraged.

(A) For a removal action workplan prepared pursuant to (d)(3), the following requirements are applicable:

1. Publication of a public notice that provides notice of the availability of the administrative record file in a local newspaper to general circulation within sixty (60) days of initiation of onsite removal action activities and also includes the following:

a. a description of the release of hazardous waste, hazardous constituent, hazardous substance or hazardous material;

b. a description of the response actions proposed to address this release;

c. identification of a spokesperson who shall respond to inquiries and provide information concerning the release and the response actions;

d. announcement of a public comment period, as appropriate, of not less than thirty (30) days from the time the administrative record file is made available for public inspection.

2. The public notice shall also be distributed to the Department, the Regional Water Quality Control Board, and state and local officials with jurisdiction.

3. Prepare a community profile report to determine the level of community interest in the removal action.

4. Prepare a written response to significant comments received from the public that result in a change in the removal action.

(B) For a removal action workplan prepared pursuant to paragraph (d)(2), the following requirements are applicable:

1. Designate a spokesperson from the response action agency. The spokesperson shall inform the community of actions taken, respond to inquiries, and provide information concerning the release of hazardous waste, hazardous constituents, hazardous substances or hazardous materials being addressed by the removal action. The spokesperson shall notify, at a minimum, immediately affected citizens, and state and local officials.

2. Conduct interviews with local officials, community residents, public interest groups, or other interested or affected parties, as appropriate, to solicit concerns, information needs, and to determine how or when citizens would like to be involved in the removal action process.

3. Prepare a public participation workplan based on the community interviews and other relevant information, specifying the public participation activities that the response action agency expects to undertake during the response.

4. Establish at least one local information repository at or near the location of the removal action site. The information repository should contain items made available for public information. The administrative record file for the removal action shall be available for public inspection in at least one of the repositories. The response action agency shall inform the public of the establishment of the information repository and provide notice of availability of the administrative record file for public review. All items in the repository shall be available for public inspection and copying.

5. Publish a public notice in a local newspaper of general circulation with the following information:

a. a description of the release of hazardous waste, hazardous constituent, hazardous substance or hazardous material;

b. a description of the response actions proposed to address this release;

c. identification of a spokesperson who shall respond to inquiries and provide information concerning the release and the response actions;

d. notice of the availability of the removal action workplan for public review for a period of not less than thirty (30) days.

6. Distribute a fact sheet to the site mailing list to describe the removal action workplan and announce the public comment period, and, if applicable, public meeting.

7. Provide the opportunity for a public meeting to be held during the public comment period at or near the site regarding the proposed plan and the supporting analysis and information, if warranted, based upon the level of community interest.

8. Prepare a written response to significant comments received from the public prior to initiation of onsite removal activity.

(e) A site may be considered a less complex site for the purposes of this chapter, if the response action agency determines that all of the following conditions apply:

(1) the response action is not taken or approved pursuant to HSC, division 20, chapter 6.8;

(2) the site is not on, proposed for, or adjacent to sensitive land uses, including, but not limited to, wetlands, residences, schools, day care centers, hospitals or hospices, unless a toxicologist qualified in accordance with subsection 68400.1(e) or the Department makes a determination that the sensitive land use is not or will not be significantly affected by the site or the release, based on an evaluation of the risk or potential risk posed by the site or the release;

(3) Releases of hazardous waste, hazardous constituents, hazardous substances or hazardous materials at the site do not result in discharges to groundwater or to surface water above maximum contaminant levels (MCLs) for drinking water established by the state of California or U.S. EPA, or above the applicable water quality objectives from the Water Quality Control Plan(s) set by the State Water Resources Control Board and/or the Regional Water Quality Control Board, or above a health-based criterion approved by the Department for chemicals that do not have MCLs;

(4) the site contains a small, single product release or a small release of up to three chemicals of concern;

(5) the site does not contain a release of a volatile organic compound or hexavalent chromium;

(6) the response action for the site will not require land use covenants or long-term operation and maintenance activities;

(7) the response action selected remedy will be completed within 120 days of its initiation; and

(8) the release has been adequately characterized as determined by the response action agency.

(f) Subsections (a), (b), (c) and (d) of this section do not apply to less complex sites. A response action taken or approved for a less complex site shall include documentation of all of the following:

(1) a preliminary endangerment assessment or other equivalent assessment, including justification for meeting the conditions set forth in paragraph (e);

(2) description of the selected remedial alternative and justification for its selection;

(3) the remediation goal(s) and justification for remedy selection;

(4) implementation plan, including, but not limited to a transportation plan, if required by the response action agency, and health and safety plan; and

(5) public participation activities required by the response action agency, which shall, at a minimum, include publication of a public notice in a local newspaper of general circulation describing the release of hazardous waste, hazardous constituent, hazardous substance or hazardous material, and the response actions proposed to address this release. Early implementation of public participation is encouraged. The public notice shall also identify a spokesperson who shall respond to inquiries and provide information concerning the release and the response actions. The public notice shall also be distributed to, at a minimum, immediately affected citizens, and state and local officials.

(g) To the extent consistent with Health and Safety Code section 25358.9, nothing in this chapter shall preclude the Department from requiring a hazardous waste facility permit, post-closure permit, closure plan, post-closure plan, or other forms of authorization, applicable to a site or facility that is subject to the requirements of Health and Safety Code, division 20, chapter 6.5, or its implementing regulations.

(h) The response action agency shall comply with the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq, whenever any activity or action required by the chapter is a project subject to CEQA.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code.
Reference: Sections 25187, 25356.1 and 25404.1, Health and Safety Code.

68400.4. Determination of a Unified Program Agency Qualification.

(a) For the purposes of this section, the following definitions apply:

(1) "administrative enforcement order" means an order issued pursuant to Health and Safety Code section 25187.

(2) "application" means a request submitted by a Unified Program Agency to the Department for a determination of qualification to implement the environmental assessment and corrective action portions of the unified program pursuant to Health and Safety Code section 25404.1.

(3) "Certified Unified Program Agency or CUPA" means the agency as defined in Title 27, California Code of Regulations, subsection 15110(a), that has been certified by the secretary to implement the Unified Program.

(4) "local oversight program" means the program in which local agencies oversee corrective actions at underground storage tank sites through a contract with the State Water Resources Control Board pursuant to Health and Safety Code section 25297.1.

(5) "Qualified UPA" means an agency delegated by the Department to implement and enforce the environmental assessment and corrective action pursuant to Health and Safety Code section 25404.1.

(6) "technical staff" means staff assigned to oversee environmental assessments and corrective action.

(7) "Unified Program Agency or UPA" means the agency as defined in Health and Safety Code subsection 25404(a)(1)(C).

(b)(1) Except as provided in paragraph (2) of this subsection, a qualified UPA may implement and enforce only those parts of the environmental assessment and corrective action program that have been delegated by the Department pursuant to Health and Safety Code section 25404.1, as described below:

(A) A qualified UPA with a Tier 1 level of qualification, as defined in paragraph (d) of this section, shall be qualified to do the following at a unified program facility within the jurisdiction of the UPA:

1. Review phase I environmental assessments, as defined in Health and Safety Code section 25200.14, (Phase I) for completeness and accuracy;

2. Inspect permit-by-rule facilities and facilities with conditional authorization for phase I compliance;

3. Enforce compliance with phase I requirements;

4. Review Further Investigation schedule, as defined in Health and Safety Code section 25200.14, to determine if a release from solid waste management unit or hazardous waste management unit requires corrective action;

5. Implement and enforce the corrective action program at less complex sites, as defined in subsection 68400.3(e) of this chapter;

6. Issue an enforcement order specifying corrective action pursuant to Health and Safety Code section 25187 for less complex sites only;

7. Review or oversee the Preliminary Endangerment Assessment (PEA) and corrective actions at less complex sites in accordance with the requirements specified in subsections 68400.3(e) and (f).

(B) A qualified UPA with a Tier 2 level of qualification, as defined in paragraph (e) of this section, is qualified to conduct the following activities at a unified program facility within the jurisdiction of the UPA:

1. All of Tier I activities;
2. Implement and enforce corrective action at applicable sites in addition to less complex sites, except as provided in subsection (2);
3. Issue an order under Health and Safety Code section 25187 for corrective action.

(2) A qualified UPA shall not implement and enforce environmental assessment or corrective action when any of the following applies:

(A) Environmental assessment or corrective action is required at any hazardous waste management facility that is or was required to possess a Resource Conservation and Recovery Act (RCRA) permit or other RCRA authorization.

(B) The Department has issued an order for corrective action at the site pursuant to Health and Safety Code section 25187.

(C) The Department has issued an order, or otherwise initiated action, with respect to the release at the site pursuant to Health and Safety Code sections 25355, 25355.5, 25358.3, 25398.2(b), 25395.21(g), or 25395.25(b) and Education Code section 17213.1.

(D) The site has been determined to be the responsibility of the Department pursuant to a mutual agreement established between the Department and the UPA.

(E) The source of the release is a facility or hazardous waste management unit or an activity that is, or was, regulated by the Department pursuant to Health and Safety Code Chapter 6.5 (commencing with section 25100).

(F) The Department is conducting, or has conducted, oversight of the site investigation and remedial action or removal action at the site at the request of the responsible party.

(G) A site is subject to a Cease and Desist Order issued pursuant to Water Code section 13301 or a Cleanup and Abatement Order issued pursuant to Water Code section 13304.

(H) The Site Designation Committee has determined the response action agency for a site to be either the Department of Toxic Substances Control, the applicable Regional Water Quality Control Board, or the Department of Fish and Game, pursuant to Health and Safety Code section 25262.

(3) A qualified UPA shall comply with the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq, whenever any activity or action required by this chapter is a project subject to CEQA.

(4) The authority granted pursuant to this section does not limit an UPA's authority to take enforcement action authorized by or in accordance with local ordinances or resolutions, to the extent local ordinances or resolutions are not inconsistent with the provisions of this chapter.

(5) A qualified UPA shall comply with all applicable state laws and regulations, and guidances, policies, or procedures adopted by the Department and local ordinances pertaining to environmental assessment and corrective action.

(6) Upon discovering a release at a hazardous waste facility that is, or was, required to possess a hazardous waste facility permit, standardized permit or interim status, a qualified UPA shall immediately notify the Department. If a release occurs at such a facility and the facility also contains units that are or were subject to generator requirements, or Permit By Rule or Conditional Authorization or Conditionally Exempt requirements, a qualified UPA shall notify and coordinate with the Department.

(7) If at any time, an UPA determines that a site requires corrective action that is beyond the activities delegated to the agency or the expertise of the agency, the response action agency shall refer the site to the Department.

(8) The Department and a qualified UPA are the only agencies authorized to implement and enforce the environmental assessment and corrective action program requirements of Health and Safety Code section 25404.1.

(A) If the Department determines that a qualified UPA has not adequately implemented or enforced environmental assessment or corrective action requirements in accordance with this chapter, the Department may issue an order pursuant to Health and Safety Code section 25187.

(B) A qualified UPA may refer sites for corrective action to the Department.

(c) Determination of Qualification.

(1) To be considered for determination of qualification, an UPA shall submit an application to the Department pursuant to this section. An UPA shall indicate in its application the Tier for which it seeks qualification.

(2) The Department, within 45 days of receipt of the application, shall inform the UPA, in writing, that either the application is complete and accepted for determination of qualification, or that the application is deficient and identify the information that is required to complete the application pursuant to this section.

(3) The Department shall complete the review, within 60 days from the receipt of a completed application, to determine whether the UPA is qualified to implement and enforce the requirements for environmental assessments and corrective action portions of the unified program under Health and Safety Code section 25404.1(a)(3)(C).

(4) The Department, upon completion of the review of the application, shall in writing either approve or disapprove the application for qualification. Within 30 days of approving the application, the Department shall issue a letter of qualification to the UPA (Notice of Approval). Within 45 days of disapproving the application, the Department shall issue a denial letter identifying the areas of deficiency pursuant to this section (Notice of Denial).

(5) Qualification Decision Appeal Process.

(A) The UPA, within 60 days of receipt of the Notice of Denial, may comment to the Department on the deficiencies and provide additional information to address the deficiencies.

(B) The Department, within 60 days of the receipt of the UPA's comments on the Notice of Denial, shall respond, in writing, to approve or disapprove the application based on the review of the information provided by the UPA in subparagraph (c)(5)(A). The UPA, within 45 days of receipt of this decision, may appeal in writing to the Director. Within 45 days of receipt of the appeal, the Director shall, in writing, issue a final decision.

(d) A qualified UPA with Tier 1 level of qualification shall meet the following Tier 1 criteria:

(1) Personnel Expertise Requirements.

(A) UPA personnel designated to perform the activities of Tier 1 as described in subparagraph (b)(1)(A) shall have educational and technical expertise sufficient to perform the activities of Tier 1 as described in subparagraph (b)(1)(A) in accordance with all applicable state laws and regulations, and guidances, policies and procedures adopted by the Department.

1. At a minimum educational expertise shall consist of the following:

a. A degree from an accredited college or university approved by the California Superintendent of Public Instruction under the provisions of Education Code section 94310 with a minimum of 60 semester units in environmental, biological, chemical, physical, or soil science; environmental or public health; environmental, civil or chemical engineering; or a directly related scientific field; or minimum qualifications and specifications for the Hazardous Substances Scientist, Hazardous Substances Engineer, or Hazardous Substances Engineering Geologist Classes as defined in the California State Personnel Board Class Codes 3564, 3726 and 3728; and

b. Two consecutive years of experience in hazardous materials management, regulation, analysis, or research, environmental research, monitoring, surveillance or enforcement, or resource recovery.

2. Technical expertise shall consist of the following:

a. Documented training or proficiency in the fields of hydrogeology, fate and transport, environmental chemistry, toxicology, preliminary endangerment assessment, quality assurance and quality control for analytical results, and statistics. Additional training in other technical disciplines related to site characterization and cleanup activities will be considered for its applicability to this requirement. This training shall be sponsored by a credible program, including, but not limited to a state or federal agency, university extension, community college, or qualified UPA; and

b. Specialized Expertise. An UPA shall demonstrate that it has the technical expertise necessary for the review and approval of engineering and geological interpretations, conclusions and recommendations that are conducted by registered professionals in conformance with applicable state law, including, but not limited to, Business and Professions Code sections 6735 and 7835 as required of the owner or operator, or generator or transporter, pursuant to subsection 68400.1(e). This specialized expertise may be provided by UPA personnel, a contractor, or an MOU agreement with a state or local agency.

(B) Documentation of UPA Personnel Expertise. An UPA shall submit with its application documentation demonstrating that UPA personnel meet the educational and technical expertise requirements as described in subparagraphs (1)(A)1. and (1)(A)2. This documentation shall specify detailed information regarding the specialized technical expertise, including the following:

1. If an UPA staff member or an MOU agreement with a state or local agency is providing specialized expertise, specify the names of persons with specialized technical expertise; a summary of education, technical training, related experience and licenses held; and time availability or commitment to activities in the delegated tier.

2. If a contractor is providing the specialized expertise, specify the qualifications of the contractor, related experience, licenses held, time availability or commitment to activities in the delegated tier, and the terms or duration of the contract, such as a retainer contract.

(2) UPA Past Experience.

(A) An UPA qualified in Tier 1 shall have the ability to issue administrative enforcement orders, and at least two years of experience conducting hazardous waste generator inspections. The required experience shall have been acquired in the two years prior to the date the application is submitted to the Department. A Tier 1 UPA shall also have one of the following:

1. Participation in a Site Designation program pursuant to Health and Safety Code section 25262;

2. At least three years of experience participating in a Local Oversight Program; or

3. At least three years of experience conducting response actions.

(B) Documentation of Past Experience. An UPA shall submit with its application documentation demonstrating that it has experience, as described in paragraph (2)(A) as follows:

1. Most recent UPA triennial final Evaluation Report as required by Health and Safety Code section 25404.4;

2. A copy of the Certification that indicates an UPA has the ability to administer the issuance of administrative enforcement order, if not included in the most recent UPA triennial final Evaluation Report; and

3. Narrative descriptions of three relevant projects completed in the last three years or in progress that most clearly demonstrate the UPA's experience, specifying responsible staff and their expertise, a description of relevant project tasks and methods for overcoming technical obstacles.

(3) A qualified UPA shall have the ability to implement the environmental assessment and corrective action program for the tier delegated, pursuant to Health and Safety Code section 25404.1 in accordance with this chapter.

(A) An UPA shall submit with its application a narrative description of how it shall implement and enforce the environmental assessment and corrective action program and delegated responsibilities in accordance with all applicable state laws and regulations, and guidances, policies and procedures adopted by the Department. This description shall specify the following:

1. The policies, procedures, approach and process the UPA will use to conduct environmental assessment and corrective action.

2. If the description of relevant projects provided pursuant to subparagraph (2)(B)3. includes cleanup activities, include in the description details of the process used to conduct the cleanup. Include details regarding public participation, CEQA compliance, site characterization, remedy evaluation and selection, selection of cleanup objectives, remedy implementation, and any long-term activities, such as operation and maintenance.

(4) Adequacy of Staff Resources.

(A) If additional staff resources are needed to implement corrective action, beyond the resources described in the original CUPA application, an UPA shall submit with its application documentation demonstrating that it has the personnel resources needed to conduct the following activities:

1. File reviews;
2. Ongoing training of personnel;
3. Non-technical support for personnel; and
4. Management of any other applicable daily operations needed to support environment assessment activities or corrective action.

(5) Recordkeeping and accounting systems. If additional recordkeeping and accounting systems are needed to implement corrective action, beyond the systems described in the original CUPA application, the UPA shall submit the following:

(A) An UPA shall submit with its application a description of its budget and accounting processes. Such processes shall include an accounting of expenditures made and revenues received for environmental assessment activities and corrective action at all unified program facilities.

(B) An UPA shall submit with its application a description of tracking systems to be used for monitoring the progress of environmental assessment activities and corrective action at all unified program facilities.

(C) An UPA shall submit with its application a description of how files will be maintained for environmental assessment and corrective action activities associated with unified program facilities within its jurisdiction. These files shall include, but not be limited to, all documents that comprise the administrative record file as defined in section 68400.2.

(6) An UPA shall submit with its application a copy of a local ordinance that shall be enacted that authorizes the UPA to recover the costs of implementing and enforcing the environmental assessment and corrective action program within its jurisdiction. An UPA may be determined to be qualified if it demonstrates to the Department that such an ordinance will be adopted within 60 days of the determination.

(e) A qualified UPA with Tier 2 level of qualifications shall meet all of the following Tier 2 criteria:

(1) An applicant UPA shall submit in its application all the required information as specified in subsection (d) of this section, which shall demonstrate that the applicant meets the Tier 1 qualifications.

(2) Personnel Expertise Requirements. UPA personnel designated to perform the activities of Tier 2 as described in subparagraph (b)(1)(B) shall have educational and technical expertise sufficient to perform the activities of Tier 2 as described in subparagraph (b)(1)(B) in accordance with all applicable state laws and regulations, and guidances, policies and procedures adopted by the Department. In addition to the requirements for personnel expertise in Tier 1, an UPA qualified in Tier 2 shall also demonstrate documented training or proficiency in the fields of risk assessment, introduction to groundwater and remedy selection. Additional training in other technical disciplines related to site characterization, cleanup activities and health risk assessment will be considered for its applicability to this requirement. This training shall be sponsored by a credible program, including, but not limited to a state or federal agency, university extension, community college or qualified UPA.

(3) Specialized Expertise. In addition to the requirements for specialized expertise in Tier 1, an UPA qualified in Tier 2 shall also demonstrate that it has the technical expertise necessary to review, comprehend and implement all toxicological interpretations, conclusions and recommendations conducted by a professional with the qualifications provided by subsection 68400.1(e). This specialized expertise may be provided by UPA personnel, a contractor, or an MOU agreement with a state or local agency.

(A) Documentation of UPA Personnel Expertise. In addition to the documentation provided for Tier 1, an UPA shall submit with its application documentation specifying detailed information regarding the specialized technical expertise outlined in subparagraph (e)(3), including the following:

1. If an UPA staff member or an MOU agreement with a state or local agency is providing specialized expertise, specify the names of persons with specialized technical expertise; a summary of education, technical training and related experience; and time availability or commitment to Tier 2 activities.

2. If a contractor is providing the specialized expertise, specify the qualifications of the contractor, related experience, time availability or commitment to Tier 2 activities, and the terms or duration of the contract, such as a retainer contract.

(4) UPA Past Experience.

(A) A Tier 2 UPA shall have the past experience of a Tier 1 UPA and one of the following:

1. At least five years of total experience participating in a Local Oversight Program and documentation of experience overseeing 10 tank removals with full-time participation of two staff members, including one supervisor; or

2. At least five years of experience conducting response actions.

(B) Documentation of Past Experience. An UPA shall submit with its application documentation demonstrating that it has the experience required for Tier 1 and the experience described in paragraph (4)(A) as follows:

1. Demonstration of UPA past experience required for Tier 1, as described in subparagraph (d)(1)(B);

2. Narrative descriptions of five relevant projects completed in the last five years or in progress that most clearly demonstrate the UPA's experience, specifying responsible staff and their expertise, a description of relevant project tasks, methods for overcoming technical obstacles, and the process used to conduct cleanups or tank removals. Include details regarding public participation, CEQA compliance, site characterization, remedy evaluation and selection, selection of cleanup objectives, remedy implementation, and any long-term activities, such as operation and maintenance.

(f) Withdrawal of Determination of Qualification.

(1) The Department may withdraw its determination of qualification if an UPA fails to maintain compliance with this chapter.

(A) If the Department determines an UPA is no longer qualified, it will issue a Notice of Withdrawal to the UPA. Within 45 days of receipt of a Notice of Withdrawal, the UPA may comment to the Department in writing on the reasons for withdrawal and may correct the deficiencies and/or provide additional information for consideration by the Department.

(B) Within 60 days of the receipt of the UPA's comments, the Department will respond, in writing, with a decision on withdrawal.

(C) Pursuant to subparagraph (B), if the Department's decision is to withdraw the determination of qualification, the UPA within 45 days of this decision, may appeal to the Director. Within 45 days of receipt of the appeal, the Director shall, in writing, issue a final decision to confirm or rescind the withdrawal.

(2) Following a determination of qualification, if resources available to a UPA changed such that the UPA can no longer conduct or oversee environmental assessment and/or corrective action, the UPA shall notify the Department within 15 days of the change. Following receipt of the notice or upon its own determination that the UPA can no longer conduct or oversee environmental assessment and/or corrective action, the Department shall:

(A) Withdraw its determination of qualification; or

(B) If the Department determines that adequate resources will be in place within six months of the date of notice or determination, the UPA may maintain its determination of qualification as long as the UPA otherwise maintains the minimum qualifications for authorization and can continue to conduct or oversee environmental assessment and/or corrective action during the six month period.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code.
Reference: Sections 25187, 25356.1 and 25404.1, Health and Safety Code.

68400.5. Permanent Disposal in an Area of Contamination

(a) The term “area of contamination” as used in this section means a contiguous area of contamination by a release of a hazardous waste, or hazardous constituent.

(b) Permanent disposal of a hazardous waste in an area of contamination occurs when hazardous waste remains or is consolidated within an area of contamination for an indefinite period of time. Such permanent disposal shall be subject to all of the requirements of chapter 14 of this division applicable to a land disposal facility. If the area of contamination is not a part of a facility required to obtain a permit pursuant to Health and Safety Code section 25200 et seq., permanent disposal of a hazardous waste in the area of contamination shall meet one of the following conditions:

(1) the disposal of a hazardous waste in the area of contamination shall take place as part of a response action that meets remediation goals established for the site, and is performed in accordance with section 68400.3 of this division; or

(2) the disposal of a hazardous waste in the area of contamination shall take place in accordance with an implementation and enforcement plan approved by the Department wherein the responsible party shall perform a risk assessment and demonstrate to the Department that permanent disposal of a hazardous waste in the area of contamination poses an insignificant risk to human health or the environment.

(c) A land use covenant shall be executed and recorded in accordance with Chapter 39, section 67391.1, of this division when

(1) disposal of a hazardous waste in an area of contamination occurs and

(2) hazardous waste will remain in an area of contamination at levels that are not suitable for unrestricted land use.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code.

Reference: Section 25187, 25356.1 and 25404.1, Health and Safety Code.

Amend Section 67450.7

Section 67450.7. Corrective Action Requirements for Facilities Operating Under Permit by Rule.

(a) An owner or operator of a facility who operates a transportable treatment unit (TTU) or fixed treatment unit (FTU) under a permit by rule pursuant to section 67450.2(a) or section 67450.2(b) shall complete a corrective action program at the facility. The corrective action program shall consist of a phase 1 environmental assessment developed pursuant to Health and Safety Code Section 25200.14 and an environmental investigation to determine the existence, source, nature and extent of any releases of hazardous waste or constituents from a solid waste management unit or a hazardous waste management unit at the facility, and the cleanup of any such releases, abatement of the effects thereof and any other necessary remedial action pursuant to section 67500.1 et seq.

(1) . . .

(2) . . .

(3) . . .

(4) An environmental investigation shall consist of a preliminary site endangerment assessment comprised of monitoring, surveys, testing or other means of collecting information to identify the existence, source and nature of contamination resulting from a release. . . .

NOTE: Authority cited: Sections 25150, 58004 and 58012, Health and Safety Code.
Reference: Sections 25150, 25187, 25200 and 25200.10, Health and Safety Code.